

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE, TENNESSEE

STATE OF TENNESSEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Ira Smolev, individually, Triad Discount	)	
Buying Service, Inc., Member Service of	)	
America, L.L.C., Orchid Associates, L.L.C.,	)	
Premier Membership Services, L.L.C.,	)	No. _____
doing business as Best Price USA and	)	
Discounts USA, Inter*Act Travel, Inc.,	)	
Inter*Act Communications, Inc.,	)	
Consumer Data Depot, L.L.C.,	)	
Erevenue Partners, L.L.C., Far Services,	)	
L.L.C., Linden Investments, L.L.C.,	)	
Lynstrom Information Service, L.L.C.,	)	
Premier Club Services, L.L.C., Premier	)	
Marketing Services of America, L.L.C.,	)	
Residents Resource Network, L.L.C.,	)	
Revenue Solutions, L.L.C., Spanish	)	
River Investors, L.L.C., The Backend	)	
Company of America, Inc., The Shoppers	)	
Edge, L.L.C., Triad Marketing Group, Inc,	)	
and Tritell of Nevada, L.L.C.	)	
	)	
Defendants.	)	

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter (“Attorney General”), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of David A. McCollum, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (“Division”). The Division has reason to believe that the Defendants named herein have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*, and that this action is in the public interest. Defendants have agreed to accept service of this Complaint and have waived any defect in the service of process associated herewith.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County because it is the county in which Defendants conduct or have conducted business. *See* Tenn. Code Ann. § 47-18-108(a)(3). Defendants have been provided with the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2). *See* Exhibit A, Affidavit and Verification of David A. McCollum, Director of the Division.

## **II. PARTIES**

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General Paul G. Summers, at the request of the Division. *See* Exhibit A, Affidavit and Verification of David A. McCollum, Director of the Division of Consumer Affairs.

3. Defendant Ira Smolev is and was the majority stock owner and Chief Executive Officer of Defendants Triad Discount Buying Service, Inc., Member Services of America, L.L.C., Premier Marketing Services of America, L.L.C. and other affiliated companies. He is and was an officer, manager and/or direct or indirect shareholder of each of the corporate Defendants. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of the corporate Defendants set forth in this Complaint.

4. Defendant Triad Discount Buying Service, Inc., is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

5. Defendant Member Service of America, L.L.C., d.b.a, Best Price USA, is a Nevada limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

6. Defendant Orchid Associates, L.L.C., is a Florida limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

7. Defendant Premier Membership Services, L.L.C., d.b.a Discounts USA, is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

8. Defendant Inter\*Act Travel, Inc., ("Inter\*Act") is a Florida corporation which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

9. Defendant Inter\*Communications, Inc., is a Utah corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

10. Defendant Consumer Data Depot, L.L.C. is a Delaware corporation which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

11. Defendant ERevenue Partners, L.L.C. is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

12. Defendant FAR Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

13. Defendant Linden Investments, L.L.C. is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

14. Defendant Lynstrom Information Service, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

15. Defendant Premier Club Services, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

16. Defendant Premier Marketing Services of America, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

17. Defendant Revenue Solutions, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

18. Defendant Residents Resource Network, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

19. Defendant Spanish River Investors, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

20. Defendant The Backend Company of America, Inc. is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

21. Defendant The Shoppers Edge, L.L.C., is a Delaware limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

22. Defendant Triad Marketing Group, Inc. is a Florida corporation with its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

23. Defendant Tritell of Nevada, L.L.C., is a Nevada limited liability corporation, which also has its principal place of business at 350 Camino Gardens Blvd., Boca Raton, FL 33432.

24. Since at least 1997, Defendants have been engaged in a common enterprise nationwide to advertise, market, promote, offer to sell, sell and distribute memberships in buying services and other services.

### **III. FACTUAL ALLEGATIONS**

Upon information and belief, the State alleges as follows:

25. Defendants have marketed and sold memberships in buying services and other memberships throughout the State of Tennessee under various names, including Triad Discount Buying Service, Best Price USA, America's Advantage, Discounts USA, FUNdamentals and others. To promote the memberships, Defendants have engaged in a telemarketing campaign directly or through contracts with third parties who telemarket their own products. Defendants have provided scripts and training on how the third party telemarketers should market the memberships.

26. The third party telemarketers have been engaged in telemarketing campaigns through inbound calls in response to catalogues, general media advertising (including infomercials), and direct mail solicitations (including postcards promoting sweepstakes or prize promotions) to sell goods or services, such as foods, dietary supplements, gadgets or magazine subscriptions. Defendants and their third party telemarketers have also sold the memberships through "outbound" telemarketing calls, *i.e.*, calls initiated by Defendants or the third party telemarketers.

27. The catalogues, advertising and direct mail solicitations used by the third party telemarketers to solicit inbound calls provided information about the telemarketers' goods or services,

but generally did not disclose that the consumers calling to order the telemarketers' goods or services also would receive a sales pitch for additional goods or services.

28. Generally, when consumers called the telemarketers to order the goods or services advertised by the telemarketers, consumers were asked to provide billing information, such as a credit card or bank account number, to pay for the telemarketers' goods or services. At the time that the telemarketers asked for the consumers' billing information, the telemarketers did not disclose that the consumers' billing information might be turned over to a third party or used to pay for other goods or services.

29. After obtaining the billing information to process the initial sales transaction, the third party telemarketers then "upsold" Defendants' memberships. "Upselling" is a telemarketing technique where one seller sells its products or services through inbound or outbound telemarketing calls, and then solicits a second seller's goods or services after the consumer has already provided a credit card number to purchase the product or service initially offered by the telemarketer.

30. The third party telemarketers often introduced Defendants' memberships as a "thank you" for the initial sales transaction. The third party telemarketers then read the sales scripts provided by the Defendants. The sales scripts represented that "we" would send the consumer a free, no obligation 30-day trial membership in a buying service providing discount prices. The sales script then stated that if the consumer chose to continue as a member, the service would cost a specified amount per month, "billed annually, in advance." In numerous instances, the telemarketers stated that "I'm going to rush you your free Trial Membership kit" and that "if you don't save at least \$1000 this year, we'll give you a full refund."

31. The Defendants' scripts read by the third party telemarketers did not disclose, in a manner consumers were likely to notice and understand, that: (a) the buying service would charge the consumer's credit card the annual membership fee shortly after the 30-day membership ended, unless the consumer called the buying service within 30 days to cancel the membership; and (b) the buying service would charge the consumer's credit card the annual membership fee every year thereafter, unless the consumer called the buying service to cancel the membership. In many instances, Defendants completely failed to disclose the above facts regarding the terms of the buying service membership.

32. In numerous instances, Defendants, directly or through the third party telemarketers, simply announced that the consumer would receive a 30-day trial membership and a membership kit in the mail, and did not request the consumer's authorization either to send the membership kit or to charge the consumer's credit card for the membership. Neither a consumer's willingness to receive a membership kit nor the consumer's failure to object when Defendants, directly or through the third party telemarketers, announced that the consumer would receive a membership kit, constituted authorization to charge the consumer's credit card.

33. If consumers agreed to accept a trial membership, and in numerous instances even if consumers did not agree, the third party telemarketers provided the consumers' names and credit card numbers or other billing information to Defendants for the purpose of enrolling these consumers for trial memberships.

34. Shortly after receiving the consumer's name and billing information, Defendants mailed, by third-class bulk mail, a membership kit to the consumer. The kit disclosed that the consumer had to call to cancel the membership to avoid a credit card charge, and the telephone number that the consumer had to call to cancel the membership. Many consumers, however, did not open these kits because the kits appeared to be unsolicited promotional or sales materials.

35. Within about 45 days after receiving the consumer's name and billing information, Defendants charged each such consumer's credit card, generally using Defendants' merchant account, or debited each such consumer's bank account and also charged the consumer's credit card for "renewal" of the membership in each subsequent year.

36. After obtaining consumers' credit card numbers, directly or from their third party telemarketers, for the purpose of enrolling consumers in a membership service, Defendants routinely retained the consumers' credit card numbers. This fact was not disclosed to consumers by Defendants or the third party telemarketers. Subsequently, in making outbound calls to market additional membership services to many of these same consumers, Defendants, with the consumers' credit card numbers already in their possession, merely asked the consumer to verify the last four digits and the expiration date of the consumer's credit card. With the updated expiration date, Defendants were able to charge the consumers' credit cards for the additional membership services.

37. In numerous calls by Defendants to consumers, in the course of soliciting consumers to accept membership services, Defendants asked consumers for personal identifying information, such as mother's maiden name and date of birth, ostensibly for the consumer to use as a password in case consumers wanted to contact Defendants about the buying service. Defendants, however, rarely, if ever, asked consumers for their personal identifying information when consumers called with questions.

38. Defendants received a large number of complaints from consumers who stated that they were signed up for 30-day memberships without their authorization or complained that they did not understand that they had to call and cancel the membership to avoid charges to their credit cards. Despite this, Defendants continued to charge consumers' credit cards without taking adequate steps to ensure that its third party telemarketers obtained authorization from consumers for such charges and disclosed the cancellation terms. Furthermore, numerous consumers complained to Defendants that they did not know how Defendants got their billing information and that they had never authorized Defendants to obtain or use their billing information. Despite this, Defendants failed to take adequate steps to ensure that consumers were told that their credit card numbers and other billing information were being turned over by the third party telemarketers to Defendants for the purposes of enrolling consumers in, and charging consumers for, Defendants' membership services.

39. During the course of Defendants' marketing and sale of memberships in buying services and other services, directly and through third party telemarketers, numerous consumers who were signed up by Defendants did not agree to accept 30-day introductory memberships and did not recall receiving necessary information about cancellation and automatic renewals. In some instances, consumers did not receive a sales pitch for the trial memberships, yet Defendants placed charges for the memberships on their credit cards.

40. Consumers, whose identities are unknown to the State of Tennessee at this time, are due monies from the Defendants. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

41. The sale, operation and advertisement of Defendants' travel services business by Defendants, as alleged herein, constitutes "trade", "commerce" and/or a "consumer transaction"

and the offering of or providing of “goods” and/or “services” as defined in Tenn. Code Ann. §§ 47-18-103(5), (10) and (11).

#### **IV. VIOLATIONS OF THE LAW**

42. By engaging in the conduct alleged above, Defendants have violated Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27) which prohibit (in pertinent part):

47-18-104:

- (a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practice . . .
- (b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:
  - (5) Representing that goods or services have characteristics, uses, benefits that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;
  - (12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;
  - (27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

43. Specifically, Defendants, directly and through their third party telemarketers, have represented that consumers who agree to the offer of a thirty-day trial membership incur no obligation to take any action to avoid having their credit cards charged for the membership in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

44. Further, Defendants, directly and through their third party telemarketers, have represented that consumers who agree to the offer of the membership will receive a "no obligation" or "risk-free" trial membership without adequately disclosing 1) that a consumer who fails to contact Defendants within 30 days and cancel the trial membership is automatically enrolled as a member and the consumer's credit card is charged an annual fee and 2) that a member's credit card is charged a renewal fee each subsequent year unless the member cancels the membership in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).



45. Further, Defendants, directly and through their third party telemarketers, have represented that consumers agreed to accept the trial memberships or agreed to purchase the memberships for which Defendants charged them when, in numerous instances, consumers did not agree to accept the trial memberships or did not agree to purchase the memberships in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

46. Further, Defendants, directly and through their third party telemarketers, have represented that only the cost of the products purchased from Defendants' third party telemarketers will be charged to the consumers' credit card accounts and no other charges to the consumers' credit card accounts will be made without the consumers' further express authorization in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

47. Further, Defendants, directly and through their third party telemarketers, have represented that Defendants' third party telemarketers are collecting consumers' financial information, such as credit card numbers, to pay for the products ordered from the third party telemarketers without disclosing to consumers that the consumer's financial information is turned over to Defendants which charges the consumer's credit card for a buying service membership or other membership in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

48. Further, Defendants, directly and through their third party telemarketers, have failed to disclose, in a clear and conspicuous manner, before consumers pay for the memberships, all material restrictions, limitations or conditions to purchase, receive or use the goods or services that are the subject of the offers, including, but not limited to: 1) that a consumer who fails to contact Defendants within 30 days and cancel the trial membership is automatically enrolled as a member and the consumer's credit card is charged an annual fee and 2) that a member's credit card is charged each subsequent year unless the member cancels the membership in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

49. Further, Defendants, directly and through their third party telemarketers, have failed to disclose, in a clear and conspicuous manner, to the person receiving the call: 1) the identity of the seller; 2) that the purpose of the call is to sell goods or services; and 3) the nature of the goods or services in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27).

## **V. PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.

(2) That process issue and be served upon Defendants requiring them to appear and answer this Complaint.

(3) That this Court adjudge and decree that Defendants have engaged in the aforesaid acts or practices, which are in violation of the Tennessee Consumer Protection Act of 1977.

(4) That this Court enjoin Defendants from engaging in the aforesaid acts or practices, which are in violation of the Tennessee Consumer Protection Act of 1977.

(5) That this Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, as provided by Tenn. Code Ann. §§ 47-18-108(b)(4) and (a)(5).

(6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977 including statutory interest as provided by Tenn. Code Ann. § 47-18-108(b)(1).

(7) That this Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3).

(8) That all costs in this cause be taxed against Defendants.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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PAUL G. SUMMERS  
Attorney General and Reporter  
B.P.R. No. 6285

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